Docket No.: KC-0040

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCE

In re Application of

Confirmation No.: 3714

Mike KINSELLA and John Law MCGUIRE

Group Art Unit: 2682

Serial No.: 09/592,563

Examiner: Lee NGUYEN

Filed: June 12, 2000

Customer No.: 34610

For: MESSAGING SYSTEM

APPELLANT'S REPLY TO EXAMINER'S ANSWER

U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief-Patents
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401 Dulany Street
Alexandria, Virginia 223134

The PTO did not ~~~~~
listed item(s) _check_ SPO

Sir:

In response to the Examiner's Answer dated December 5, 2005, consideration of the following remarks is respectfully requested.

The invention relates to a messaging system which can be used as part of an introduction or dating service. A user would utilize the messaging system to send a message to a specific individual, observed by the user, who the user is interested in meeting.

Prior art messaging systems which are used as part of introduction or dating services typically allow a user to send a message to multiple people that match a specified set of criteria. In virtually all instances, the user has not physically seen the message recipients before the messages are sent.

In one type of prior art system, a user would select a set of preferences from a generic, predetermined listing of preferences. The messaging system would then compare the preferences identified by the user to potential matching people in a database. The messaging system would then deliver a message to the user indicating potential matches, and the user may then choose to send a message to the identified matching people. However, in this type of messaging system, the recipients are selected by the system, not the user. Also, the message which includes the sender's preferences is separate from any message which may eventually be sent to the matches selected by the system.

In another type of prior art messaging system, the user would be allowed to browse through listings posted by other system users. The postings would contain information about the other system users, and possibly photographs. The user would then select one or more of the other system users, and ask the messaging system to deliver a message to the selected people. In this type of system, although the user is selecting who will receive his messages, the user still only sees the online postings. The user never sees the actual people who made the postings. Since the postings may contain out-of-date information or inaccurate photographs, the user can never be fully confident that he is sending a message to someone truly of interest. In addition, this type of system still requires the user to send two messages, one to the system to identify the recipient, and another that will be actually delivered to the selected recipients.

The claimed systems and methods are different from the prior art systems described above, and they overcome some of the deficiencies of the prior art systems and methods. The

claimed messaging system allows a user to send a message to a recipient who has been visually observed by the user, in person. The user's message can be delivered to the user's intended recipient even though the user does not know any specific identity information regarding the intended recipient.

In the claimed systems and methods, if a user physically observes an individual which the sender is interested in contacting or meeting, the user may use the claimed messaging system to contact this recipient. This is accomplished by physically observing, in person, specific physical characteristics and/or a specific location associated with the individual. The user then sends a message that includes these observed characteristics. The messaging system then uses the observed characteristics to determine who the intended recipient is, and the messaging system forwards on the message to that person. This allows the user to send a single message which contains both observed characteristics which identify the recipient, and the message itself, to the intended recipient, without the need for additional communication with the system.

Thus, the claimed systems and methods allow a sender to contact a recipient of his own choosing, and one who he has physically observed. This eliminates the problems in the prior art systems discussed above, which may have postings with inaccurate or out-of-date information and photographs. The claimed systems and methods also allow a user to immediately transmit a message to someone that the user has just observed, which is impossible for the prior art systems and methods.

U.S. Patent No. 6,549,768 to Fraccaroli (hereinafter "Fraccaroli"), which is used to reject

the claims of this application, discloses a number of different prior art systems which each match a user to previously unidentified/not observed recipients based on a listing of preferences provided by the user. Fraccaroli further discloses a mobile communications matching system which enables subscribers to establish an individual profile in a central database, and to be matched with other, previously unidentified/unseen subscribers who are in the same geographic location.

Fraccaroli's systems suffer deficiencies similar to those of the prior art systems discussed above. Specifically, a user of Fraccaroli's system does not have the opportunity to first physically observe an intended recipient. The user also cannot immediately transmit a message to someone that the user has just observed. Rather, the user must first send a message to the system requesting potential matches, and then a separate message to a selected, but unknown, and unobserved recipient.

Applicants respectfully disagree with the Examiner's assertion that the listing of preferences and personal profiles disclosed by Fraccaroli constitutes an observation and selection of an intended recipient. Matches are simply generated by the database based on a comparison of individual profiles and location of subscribers, who are not given an opportunity to send a message to a recipient who the sender has physically seen/observed. In the Fraccaroli system, a recipient is neither observed nor selected by the sender prior to sending a message, nor is there an "intended recipient" using Fraccaroli's matching system.

For example, independent claim 46 is directed at a message pushing system in which the

message comprises personal characteristics of an intended recipient of the message based on personal characteristics observed by a user of the message sending device. As set forth above, Fraccaroli neither discloses nor suggests an <u>intended</u> recipient. Rather, a recipient is selected by the database based on personal profiles and location. Additionally, because the recipient is unknown to and not selected by the sender, but by the database, the sender cannot observe physical characteristics of the recipient. Thus, any message generated by Fraccaroli's system necessarily cannot include personal characteristics observed by a user.

For the reasons given above, and for the reasons stated in Applicants' earlier filed Appeal Brief, it is respectfully submitted that Fraccaroli neither discloses nor suggests a messaging system as claimed in the application under appeal. The Honorable Board is respectfully requested to reverse the rejections set forth in the Final Rejection, and to pass this application to issuance.

Respectfully submitted,
FLESHNER & KIM, LLP
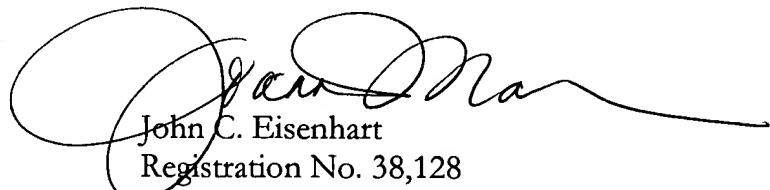
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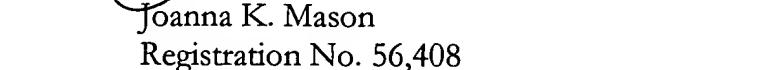
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